IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 84 of 2007

Date of Decision: 26.11.2007

M/s Vinayal Plastic Industries & ors ….. Petitioners

Versus

State Bank of India … Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Petitioner : Mr. Ajay Sharma, Advocate.

For the Respondent(s) : Mr. Ashwani K Sharma, Advocate.

Deepak Gupta, J

This petition under Article 227 of the Constitution of India is directed against the order of learned Civil Judge (Sr.Div.), Kangra at Dharamsala whereby he has ordered the attachment of the movable property lying inside industrial plots No. 13 & 14, Industrial Area, Nagrota Bagwan, District Kangra.

Admittedly, the petitioner is a judgment debtor and owes a huge amount of money to the decree holder-bank in terms of a decree passed against him on 19.10.1993. The petitioner is also the owner of a residential building and shed constructed on the industrial plot Nos. 13 & 14, Nagrota Bagwan, District Kangra. The decree holder-bank moved an application under Order 21 rule 43 for attachment of the movable property lying in the said premises.

This application was contested by the judgment debtor and one of the main grounds taken was that the property lying inside the said premises does not belong to the judgment debtor but belongs to his daughter-in-law who along with her husband is residing in the said property. Vide the impugned order, the court below has ordered attachment of the property.

Shri Ajay Sharma has strenuously contended that the order of attachment could not be passed since the property does not belong to the judgment debtor but belongs to his daughter-in-law. He also contends that before attachment could have been ordered under Order 21 Rule 43, the statement of the judgment debtor should have been recorded under Order 21 rule 41 to ascertain which property belongs to the judgment debtor and which does not belong to him.

As far as the first contention is concerned, I am of the considered view that the judgment debtor has no right to object to the attachment of any property which according to the judgment debtor does not belong to him. If the property belongs to any third party then it is the third party which has the right to object to such attachment. The judgment debtor has no locus to urge that the property does not belong to him and should not be attached. If the property not belonging to him has been attached then he is not adversely affected and it is for the person whose property is attached to file objections under Order 21 rule 58 CPC.

As far as the second contention is concerned, the same is without merit. There is no requirement of law that before any property of a judgment debtor is attached his statement under

Order 21 rule 41 must be recoded. The examination of judgment debtor under rule 41 is to be made only when the decree holder applies to the court that such person be examined about the particulars of his property. If the decree holder is aware of the property of the judgment debtor, he need not require the examination of the judgment debtor under rule 41.

In view of the above discussion, the petition is dismissed. However, in case any party moves the executing court objecting to the attachment of the property on the ground that the said party is the owner of the attached property, the executing court shall decide the application on the basis of the material placed before it totally uninfluenced by what has been stated in this judgment. No order as to costs.

November 26, 2007 (Deepak Gupta), J.

s.